

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN A. & KATHY STEPNIAK,

Plaintiffs,

v.

ORDER
03-CV-569A

UNITED MATERIALS, LLC.,

Defendant.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On September 2, 2009, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that plaintiffs' cross motion for summary judgment be denied and that their second cause of action be dismissed, without prejudice.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, plaintiffs' cross-motion for summary judgment is denied and their second cause of action is dismissed, without prejudice.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 24, 2009